

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
	:	
A.W. FINANCIAL SERVICES, S.A., as successor	:	
in interest to TERTIAIRE INVESTISSEMENT,	:	
S.A.,	:	
	:	
Plaintiff,	:	07 CIV 8491 (SHS) (RLE)
	:	
- against -	:	
	:	
EMPIRE RESOURCES, INC., AMERICAN	:	
STOCK TRANSFER & TRUST COMPANY,	:	
and AFFILIATED COMPUTER SERVICES, INC.,	:	
	:	
Defendants.	:	
	:	
-----X		

**DECLARATION OF DEBORAH A. MAHER
IN SUPPORT OF DEFENDANT EMPIRE RESOURCES, INC.'S
MOTION TO DISMISS THE AMENDED COMPLAINT**

I, Deborah A. Maher, declare under 28 U.S.C. § 1746:

1. I am an attorney admitted to practice before this Court and an associate at Weil, Gotshal & Manges LLP, attorneys for defendant Empire Resources, Inc. ("Empire"). I submit this declaration in support of Empire's motion to dismiss the Amended Complaint filed by A.W. Financial Services, S.A. (the "Motion").

2. Attached as Exhibit 1 hereto is a true and correct copy of the Affidavit of Loss and Indemnity Agreement executed by Tertiaire Investissement, S.A. dated May 22, 2000.

Dated: New York, New York
May 2, 2008



Deborah A. Maher (DM-9333)
767 Fifth Avenue
New York, NY 10153
212 310-8000 (Telephone)
212 310-8007 (Fax)

EXHIBIT 1

AFFIDAVIT OF LOSS AND INDEMNITY AGREEMENT

STATE OF FRANCE

SS.:

COUNTY OF PARIS

(1) Deponent (PRINT NAME) TERTIAIRE INVESTISSEMENT is of legal age and resides
at Presently known as TERTIAIRE DEVELOPPEMENT SA.

Please check here if this is a permanent address change. ☐

Home Tel. No. 47 Rue de CHAILLOT PARIS 75116 Work Tel. No. Tel: 01 56 62 21 00

Driver's License

#

Occupation Investment Company.

And Employer's Name &
 Address _____

Deponent is the owner of or is acting in a representative or fiduciary capacity with respect to certain Securities (Describe the type of security, identification number and number of face value.):

CERT. NO (S): IT 0000065

(hereinafter called the "Original"),

ISSUED BY: (Name of Stock):

(hereinafter called the "Issuing Corporation"), COMPANY CODE:

in the name of (Shareholder(s) name):

8563.

Social Security #

(2) The Original was acquired by the deponent on or about

19____, and was lost, stolen or destroyed on or about____, 20____ under the
 following circumstances (State the circumstances in detail):

The Certificate was never received by us; its
whereabouts are not known.

(3) The Original (was/was not) endorsed. (If endorsed, describe the form or endorsement and state whether signature was guaranteed.)

not known.

(4) Deponent has made or caused to be made diligent search for the Original and has been unable to find or recover same, and that deponent was the unconditional owner of the Original at the time of loss, and is entitled to the full and exclusive possession thereof; that neither the Original nor the rights of deponent therein have, in whole or in part, been assigned, transferred, hypothecated, pledged or otherwise disposed of, in any manner whatsoever, and that no person, firm or corporation other than the deponent has any right, title, claim, equity or interest in, to or respecting the Original or the proceeds thereof, except as may be set forth in statement (5) following.

(5) If deponent's interest in the Original is in a representative or fiduciary capacity, indicate below the designation of such capacity; ie., administrator, executor, etc., and the title of the estate as follows:

Deponent is the _____ of the estate of _____.
Specify name of any other persons having an interest in the Original. List them below and indicate the nature of their interest, such as heir, legatee, etc.

NAME

INTEREST

(6) Deponent makes this affidavit and agreement of indemnity for the purpose of inducing the Issuing Corporation and its agents to issue new securities in substitution for the Original and Technology Insurance Company to assume liability in respect thereof under its Lost Security Blanket Bond No. 98TLB0001.

(7) Deponent agrees that if said Original should ever come into deponent's hands, custody of power, deponent will immediately and without consideration surrender the Original to the Issuing Corporation, its transfer agents, subscription agents, trustees or Technology Insurance Company for cancellation.

(8) (Complete when market value of original exceeds \$100,000) Deponent represents that he owns real estate valued at \$ _____, mortgage for \$ _____, cash/securities \$ _____, salary \$ _____, other investments \$ _____, and estimated net worth \$ _____.

Bank-1 Name _____ City _____ Acct.# _____ Balance \$ _____

Bank-2 Name _____ City _____ Acct.# _____ Balance \$ _____

(Deponent certifies that the above is true and authorizes confirmation of bank balances and other information in this affidavit.)

(9) Deponent agrees, in consideration of Technology Insurance Company assuming liability or liability attaching under its Indemnity Bond in favor of the Issuing Corporation and its agents, the undersigned (jointly and severally, if more than one) hereby agree at all times to indemnify and save harmless Technology Insurance Company from and against any and all liabilities, losses, damages, judgements, costs, charges, counsel fees and expenses of every nature and character which they may sustain and incur by reason or on account of assuming liability attaching under its Indemnity Bond.

Signed, sealed and delivered by deponent this 22nd day of MAY, 2000

H. DESACHE
Signature of Deponent

PRESIDENT OF TERTIAIRE
Social Security # DEVELOPEMENT S A

State of _____

ss.:

County of _____

Signature of Deponent

Social Security #

State of _____

ss.:

County of _____

Subscribed and sworn to
before me

Subscribed and sworn to
before me

Je soussigné, M^e Bernard CARVAIS,
Notaire Public
Notaire à Paris-XVII^e, 5, rue de Logelbach
certifie exacte la signature ci apposée de
M. HERVE DESACHE
Fait à Paris le 23.05.2000

Notary Public

